IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CONTEMPT PETITION NO.54 OF 2007

IN

SUIT NO.658 OF 2007

S.Gopinathan & Anr. .. Petitioners.

Versus

Narendra Gupta .. Respondent.

Mr.Vinod S.Pandey i/b.E.K.Sasidharan for petitioners.

Mr.Birendra Saraf a/w.Ms.Prachi Khandge i/b.Parimal K. Shroff & Co. for respondent.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 28th AUGUST, 2007.

P.C.:

1. The petitioner, who has purchased the flat from the respondent has urged that the respondent is in breach of the order passed by this Court at an interlocutory stage. He submits that the order directed the respondent to put the petitioners in possession of a flat after the petitioners make the payment stipulated therein. The order very clearly directs that upon plaintiffs paying to

the defendant that is the respondent, the amounts mentioned in Items (ii) to (vi), (ix) and (x) in paragraph 8 of the affidavit of the respondent dated 18th March, 2004, the petitioner would be put in possession of flat No.005, ground floor, Building No.1, N.G.Complex, Marol, Mumbai. The respondent defendant was permitted to take away the monies deposited in Court on furnishing an Undertaking. The order insofar as it is material for the purposes of this petition, reads thus :-

> "(II) After the deposit is made by the plaintiffs, on an application being made by the defendant, the Prothonotary & Sr.Master shall permit the defendant to withdraw the amount directed to be deposited by the plaintiffs on the defendant furnishing an undertaking to the Court undertaking to redeposit the amount if so directed by this Court and on such terms and conditions including term as to payment of interest as may be directed by this Court.
>
> (III) It is clarified that the defendant is handing over possession of the flat to the plaintiffs subject to the result of this suit.

(IV) As the handing over of possession is subject to the result of the suit, the plaintiffs are restrained from disposing of, alienating or part with possession of the flat in question without seeking leave of the Court during the pendency of the suit.

(V) In case, the defendant is having in his possession the original cheques dated 8th November, 2003 and 10th November, 2003 issued by the plaintiffs in favour of the defendant, the defendant shall deposit the original documents in the custody of the Prothonotary & Sr. Master.

(VI) As the handing over of possession is subject to the result of the suit, the plaintiffs are restrained from disposing of, alienating or parting with possession of the flat in question without seeking leave of the Court during the pendency of the suit."

2. The interlocutory application was disposed of with the aforesaid order.

3. My attention is invited to the correspondence

after the said order which is between the petitioners' Advocate and the respondent so also the Society. It is the grievance of the petitioners that they were put in possession of the flat with all other amenities. Car parking and gymkhana facilities were not made available. The payment reflects that not only the purchase price but charges towards all such amenities are also deposited in the Court and the amounts withdrawn by the respondent on the assurance that all such facilities/amenities are existing at site and would be made available.

4. There are no such amenities inasmuch as the correspondence would reveal that the car parking facility is denied to the petitioners. The portion earmarked for the petitioners is not allotted by the Society to them. The amounts are taken away by the respondent but such a basic amenity of car parking is not made available to them. The letter and spirit of the order would indicate that such facilities were existing and were to be provided upon payment. The payments having been made, the respondent fail to provide the same, results in breach of the order and the respondent has thus violated the same.

5. Mr.Saraf, on the other hand, would urge that this is not the scope of the contempt petition inasmuch as

there are no directions to allot a particular car parking spot/slot. Further, all such facilities were provided. The amounts were made over to the persons concerned but it appears that there are inter se disputes and that is how the facility is not made available. In any event, the suit is pending and the remedy of the petitioners is not the contempt petition but initiation of proper proceedings either in the suit or otherwise.

6. Having perused the petition and the annexures thereto, including the order passed by this Court, in my opinion, the order directs possession to be handed over and essentially secures the same for the petitioners. The charges, true as it is, are towards the amenities but there is no direction in that behalf inasmuch as it is quite possible that the same are to be provided by the Co-operative Housing Society as well.

7. In such circumstances and considering that neither the Co-operative Housing Society is a party to the proceedings before the learned Single Judge nor to the present petition, it would not be proper to proceed with the contempt petition. The contempt jurisdiction is limited and it is essentially aimed at protecting the Majesty of the Court. It is not aimed at compliances at

all costs of obligations arising out of contract or otherwise. In such circumstances, I am of the view that the contempt petition is not the remedy for the petitioners. The petition is, therefore, dismissed with liberty to the petitioners to adopt appropriate proceedings in the pending suit or otherwise. All contentions of both sides in that behalf are expressly kept open. The order passed on the contempt petition shall not preclude the parties from raising appropriate pleas and for the Court to consider them and pass such orders as are permissible in law.

(S.C.Dharmadhikari, J.)